

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RICKY BROSS,

Plaintiff,

v.

ROBERT NAPEL,

Defendant.

Case No. 11-cv-12942

HONORABLE STEPHEN J. MURPHY, III

ORDER ADOPTING REPORT AND RECOMMENDATION (docket no. 11), **AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** (docket no. 8)

Plaintiff Ricky Bross, currently confined at the Marquette Branch Prison in Marquette, Michigan, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. §2254. Mr. Bross challenges his guilty plea as involuntary, claims ineffective assistance of counsel, and pleads actual innocence arising from his conviction for armed robbery. Defendant Robert Napel moved for summary judgment on January 12, 2012. ECF no. 8. The motion was referred to a magistrate judge. The magistrate judge issued a Report and Recommendation ("Report") on August 29, 2012, suggesting that the Court conclude Mr. Bross's petition is barred by the statute of limitations found in 28 U.S.C. 2244(d), and that it should decline to issue a certificate of appealability. Neither Mr. Bross nor Mr. Napel filed any objections to the Report.

Civil Rule 72(b) governs review of a magistrate judge's report and recommendation. De novo review of the magistrate judge's findings is only required if the parties "serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). Nevertheless, because a district judge always retains jurisdiction over a motion after referring it to a magistrate judge, he is entitled to review the magistrate judge's findings of fact and conclusions of law on his own initiative. See *Thomas v. Arn*, 474 U.S.

140, 154 (1985) (clarifying that while a district court judge need not review a report and recommendation “de novo if no objections are filed, it does not preclude further review by the district judge, sua sponte or at the request of a party, under a de novo or any other standard”).

Because neither the plaintiff nor defendant filed objections, de novo review of the Report's conclusions is not required. Having reviewed the Report's analysis, in light of the record, the Court finds that its conclusions are factually based and legally sound. Accordingly, it will adopt the Report's findings, grant the motion for summary judgment, and dismiss this case.

WHEREFORE, it is hereby **ORDERED** that the Report (docket no. 11) is **ADOPTED**.

IT IS FURTHER ORDERED that the Defendant's motion for summary judgment (docket no. 8) is **GRANTED**, and that the Petitioner's application for a writ of habeas corpus is **DENIED**.

IT IS FURTHER ORDERED that the Court **DECLINES** to issue a certificate of appealability on any issue.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: September 27, 2012

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 27, 2012, by electronic and/or ordinary mail.

Carol Cohron
Case Manager